

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

MAXWELL SHOE COMPANY, INC.,

Plaintiff,

v.

EDELMAN SHOE COMPANY, LLC and
SAM EDELMAN

Defendants.

Civil Action No. 04-10694 RCL

**DEFENDANTS' OBJECTIONS TO MAGISTRATE JUDGE'S
FINDINGS AND RECOMMENDATION ON PLAINTIFF'S MOTION
FOR PRELIMINARY INJUNCTION**

Pursuant to the Rule 72(a) Fed. R. Civ. P., Defendants Edelman Shoe Company, LLC and Sam Edelman hereby submit the following objections to the Magistrate Judge's Findings and Recommendation on Plaintiff's Motion for Preliminary Injunction. Defendants do not dispute the Magistrate Judge's recommended ruling, but rather submit these objections to preserve their rights with respect to the Magistrate Judge's findings that are the subject of these objections.

1. Rights to Use of Name Sam Edelman

In referring to the agreement concerning the sale of the SAM & LIBBY trademark to the plaintiff, the Report states:

"That agreement contained a covenant which provided that for three years after the sale of the trademark, neither Maxwell nor Mr. Edelman could use Mr. Edelman's name in any capacity relating to the marketing or sale of shoes."

This statement is not accurate. The agreement provides that Maxwell Shoe cannot use Mr.

Edelman's name or any similar name *at any time* after the sale of the SAM & LIBBY trademark;

only Mr. Edelman has the right to use his name in connection with the marketing and sale of shoes after the three-year period expired on July 25, 1999.

2. **Consent**

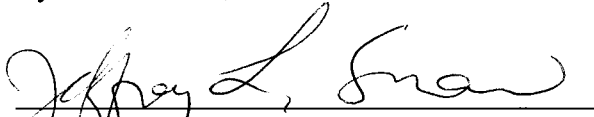
The section of the purchase agreement referenced in point 1 above (Section 9.10) constitutes a consent by Maxwell Shoe to Mr. Edelman that permits Mr. Edelman to use his name in or on any footwear product after July 25, 1999. The consent of a trademark owner to another's use of a mark is an absolute defense to a claim of trademark infringement. See 15 U.S.C. § 1114.

Respectfully submitted,

EDELMAN SHOE COMPANY, LLC and
SAM EDELMAN

By their counsel,

Dated: August 23, 2004


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Certificate of Service

I hereby certify that a true copy of the above document was served upon the attorney of record for Plaintiff by hand on August 23, 2004.


Jeffrey L. Snow